

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

BEFORE THE
FEDERAL ELECTION COMMISSION
OCT 27 P 4:37

CHAD CABLE

SUPPER SPRINGS TX 75482
Hopkins County
(Complainant) Prec 8

MUR # 6113

Kirby Hollingsworth
P.O. Box 41
Mount Vernon, TX 75457-0041, and

Kirby Hollingsworth for State Representative
P.O. Box 41
Mount Vernon, TX 75457-0041,

Respondent.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Kirby Hollingsworth and Kirby Hollingsworth for State Representative ("Respondents") for multiple violations of the Federal Election Campaign Act, as described below.

A. FACTS

Kirby Hollingsworth is a candidate for the Texas House of Representatives. Kirby Hollingsworth for State Representative is his campaign committee. The committee is not registered with the Federal Election Commission. Under Texas law, candidates for state office may receive unlimited contributions from individual donors. Hollingsworth has received campaign contributions well in excess of the amounts permitted by Federal law, including a total of \$50,500 from the "Associated Republicans of Texas."

29044253945

Respondents have paid for and distributed a direct mail piece to voters in which they advocated for the election of Hollingsworth and presidential candidate John McCain, and for the defeat of Hollingsworth's opponent, Mark Homer, and presidential candidate Barack Obama.

The piece stated

Kirby Hollingsworth and John McCain: Real Experience. Real Solutions. Both Are Ready to Lead. "Northeast Texas is firmly behind John McCain and Sarah Palin – and so am I." – Kirby Hollingsworth.

The piece also stated that "Barack Obama's liberal policies are bad for America . . . And Mark Homer's blind support for these policies are bad for Texas." On information and belief, Complainants allege that Respondents distributed 500 or more copies of this mail piece.

Respondents have also begun to air a radio advertisement that expressly advocates for the election of John McCain and Sarah Palin. The ad states:

Do you support Barack Obama for President? Mark Homer does. As reported in the press, Homer told us to be behind Barack Obama. We know Mark Homer is behind Obama, but who's behind Mark Homer? Official records show Homer is funded by lobbyists and Austin special interests. In Austin, Homer voted to give illegal aliens in-state tuition, and voted to allow illegal immigrants to get special health insurance coverage, leaving less for our kids. Had enough? Meet Kirby Hollingsworth, family man, business man, church leader. Kirby Hollingsworth opposes taxpayer handouts to illegal immigrants, wants less government, lower taxes, and more freedom. Kirby Hollingsworth stands up for the forgotten middle class, and speaks up for our conservative, east-Texas values. And Kirby Hollingsworth thinks Sarah Palin is the breath of fresh air we need. That's why he proudly endorses the McCain-Palin team. Kirby Hollingsworth for State Representative. The conservative change we need. Political ad paid for Kirby Hollingsworth for State Representative.

On information and belief, Complainants allege that the Respondents spent \$20,000 or more on this radio advertisement.

B. LEGAL ARGUMENT:

1. Respondents Paid for Public Communications that Are Subject to the Limitations, Restrictions, and Reporting Requirements of FECA

29044253946

The Bipartisan Campaign Reform Act ("BCRA") prohibits candidates for state or local office from spending any funds for public communications that promote, support, attack, or oppose any candidate for Federal office, unless those funds are subject to the "limitations, prohibitions, and reporting requirements of [the Federal Election Campaign] Act." 2 U.S.C. § 441i(f)(1); see 11 C.F.R. § 300.71. "Public communications" include communications transmitted by radio broadcast and "mass mailings," which are "mailings of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period." 11 C.F.R. §§ 100.26-27. The radio advertisement and mailing sponsored by Respondents are public communications and are, thus, subject to the requirements of the Act.

2. Respondents Failed to Register as a Political Committee with the FEC.

Any entity that makes expenditures for the purpose of influencing a Federal election aggregating in excess of \$1,000 during a calendar year must file a statement of organization with the Federal Election Commission. 2 U.S.C. §§ 431(4), 433. Here, Respondents sponsored a radio advertisement that expressly endorsed John McCain for President and Sarah Palin for Vice President. In addition, Respondents sponsored a mail piece that attacked Federal candidate Barack Obama, and expressly advocated for the election of John McCain and Sarah Palin. The cost of the radio advertisement alone was around \$20,000, well over the \$1,000 registration threshold. Respondents were required to register as a political committee with the Commission before making these expenditures. By failing to do so, they have violated FECA.

3. Respondents Violated BCRA's Prohibition Against Spending Non-Federal Funds to Fund Public Communications Supporting or Opposing a Federal Candidate.

The Federal Election Campaign Act limits the amount of money that any person may contribute to Federal candidates and committees. 2 U.S.C. § 441a(a). It is illegal for any person

29044253947

to contribute, and for any candidate to receive, contributions in excess of \$2,300 per election. *Id.* FECA also restricts the sources from which candidates and committees may receive contributions. *See, e.g.*, 2 U.S.C. §§ 441b(a) (prohibiting contributions from corporations and unions), 441c (federal contractors), 441e (foreign nationals). Under BCRA, candidates for state or local office may not spend funds for public communications that promote, support, attack, or oppose a Federal candidate office, unless those funds are subject to these limits and source restrictions. 2 U.S.C. § 441i(f)(1); *see* 11 C.F.R. § 300.71.

As described earlier, Texas law permits candidates for state office to receive unlimited contributions from individual donors and, in fact, Kirby Hollingsworth for State Representative has received campaign contributions well in excess of the amounts permitted by Federal law, including aggregate contributions of \$50,500 from the "Associated Republicans of Texas." By using non-Federal funds to pay for public communications supporting McCain and opposing Obama, Respondents have violated 2 U.S.C. § 441i(f)(1). The Commission should also investigate whether Respondents have violated BCRA by using funds from restricted sources.

4. Respondents Failed to Report their Communications as Independent Expenditures

Political committees that make independent expenditures aggregating \$1,000 or more in the twenty days before an election must file reports describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1). Political committees that make independent expenditures aggregating \$10,000 or more at any time leading up to the twentieth day before an election must file reports describing the expenditures within 48 hours. *Id.* § 434(g)(2). Respondents paid in excess of \$10,000 for independent expenditures supporting McCain and opposing Obama, but failed to file any independent expenditure reports. Respondents have violated 2 U.S.C. § 434(g).

29044253948

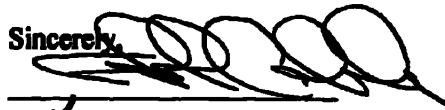
5. Disclaimers

The FECA provides that all public political advertising that expressly advocates the election or defeat of a clearly identified candidate must contain a proper disclaimer identifying who paid for the communication and whether or not the communication was authorized by a candidate. 2 U.S.C. § 441d(a). In addition, if a communication is not authorized by a candidate or candidate's committee, it must list the sponsor's address, telephone number, or World Wide Web address. *Id.* Both of Respondents' communications are in violation of this provision. The radio advertisement states that it was paid for by Kirby Hollingsworth for State Representative, but does not state Respondents' contact information or state that the ad was not authorized by any candidate or candidate's committee. The mail piece does not include any disclaimer whatsoever.


C. REQUESTED ACTION

As we have shown, Respondents have committed multiple violations of the Federal Election Campaign Act. The Commission should not tolerate such flagrant disregard of the Act and its regulations. We respectfully request the Commission to investigate these violations immediately. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

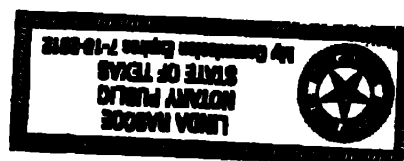


SUBSCRIBED AND SWORN to before me this 25th day of October, 2008.



Notary Public

My Commission Expires: 11/18/2012



KIRBY HOLLINGSWORTH AND JOHN MCCAIN

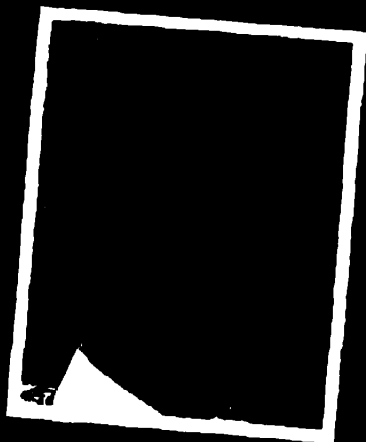
"Northeast Texas
is firmly behind
John McCain
and Sarah Palin-
and so am I."

- Kirby Hollingsworth

Pol. Adv. Kirby Hollingsworth
for State Representative
POBOX41
Mount Vernon, TX 75457-0041

PERMIT STD US
POSTAGE PAID
CLEARVISIONS
INC.

Kirby Hollingsworth
Your conservative choice for
state House district 2



Mark Homer urges voters to blindly
follow Barack Obama's liberal policies.

29044253949

Northeast Texas deserves a
leader... not a follower.

Mark Homer's blind support for
Barack Obama shows that he puts
his party first, over Northeast Texas...
no mater what!!!

Barack Obama's liberal policies are bad for America...
And Mark Homer's blind support for these policies are
bad for Texas.

He's for Texas.

Mark Homer "urged Democrats to unite
behind is chosen as the party's
presidential candidate."¹

29044253951-